

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AG. G. a minor, by and through his guardian ad litem, JESSICA AQUINO; AR. G., a minor, by and through his guardian ad litem, JESSICA AQUINO; KARLA GONSALEZ, individually; and AUGUSTIN GONZALES JR., individually;

Plaintiffs,

vs.

CITY OF HAYWARD, a municipal corporation; MARK KOLLER, individually; PHILLIP WOOLEY, individually; MICHAEL CLARK, individually; TASHA DECOSTA, individually; and DOES 1-100, inclusive,

Defendants.

Case No. 4:19-cv-00697 DMR

**DECLARATION OF BENJAMIN  
NISENBAUM IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

**Date: July 9, 2020  
Time: 1:00 p.m.  
Courtroom: 4**

**Hon. Donna M. Ryu**

**EXHIBIT M**

**INTERVIEW WITH OFC. MICHAEL CLARK****Q=Det. Robert Purnell****Q1=Det. Eric Mulhern****Q2=Atty. Harry Stern****Q3=DA Insp. Caesar Basa****Q4=DDA Autrey James****A=Ofc. Michael Clark**

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11  
12  
13  
14  
15  
16 Q: Officer Clark, you can sit next to your attorney, please.

17  
18 A: Okay. I'm sorry.

19  
20 Q: The members of the District Attorney's Office can sit there. All right. For the  
21 audio recording it is 11/18/2018, approximately 1509 hours or pm, in the  
22 afternoon. If we could start by going around the room. I'm Detective Robert  
23 Purnell and this is the officer-involved shooting interview of Officer Clark.

24  
25 Q1: Detective Mulhern, Hayward PD, Investigations Bureau.

26  
27 A: Officer Clark, Hayward PD, Patrol Division.

28  
29 Q2: I'm Harry Stern, I'm a lawyer with Raines, Lucia, Stern, and I'm here  
30 representing Officer Clark.

31  
32 Q3: Inspector Basa with the Alameda County District Attorney's Office.

33  
34 Q4: Deputy District Attorney Autrey James, Alameda County District Attorney's  
35 Office.

36  
37 Q: All right. So Officer Clark, the first thing I'm gonna go over is a, uh,  
38 Interview Admonishment form. I believe you, uh, probably already gone over  
39 this with your attorney. Um, I'm gonna kind of, uh, talk as I fill this form out,  
40 and then I will read it and get your signature on it, so. For the, uh, again, for  
41 the purpose of the audio recording, um, report number is 2018-94542, uh,  
42 today's date 11/18/2018, um, I will be putting myself as the investigator. Um,  
43 all right. Officer Clark, you are represented here at this interview by your  
44 attorney, Harry Stern. You are not in custody and you are free to conclude the  
45 interview at any time. You are not obligated to answer any questions. Any

46 answers you do give may be used in a court of law. Having this in mind, do  
47 you wish to voluntarily proceed with the interview?  
48

49 A: Yes.  
50

51 Q: All right. So Officer Clark, I'm gonna have you sign if you would, please, um,  
52 where it says signature of officer. Mr. Stern, if you would sign below him,  
53 please.  
54

55 Q2: I sure will.  
56

57 Q: And I will be signing as the investigator. So, uh, Officer Clark, um, kind of  
58 how the interview (unintelligible) what we're gonna do is I'm gonna go  
59 through a series of, uh, kind of preliminary questions about you, uh, your  
60 background, training and such of things. We'll go into a little bit about, uh,  
61 your uniform, the, uh, firearm that you carry. From there we'll, uh, go into a  
62 little bit about your - the vehicle you were driving, some, uh, questions about  
63 the scene, uh, where this occurred. From there we'll have you do a - a free  
64 narrative of the event. I'll do my best not to, uh, interrupt you as you go, um,  
65 so I'll just have you describe, you know, how you responded, um, you know,  
66 where you came from, what you were aware of, um, the radio traffic and such  
67 things, and then what actually occurred once you, uh, go on scene. Um,  
68 Detective Mulhern and I will probably, uh, go back over that and ask you  
69 some questions, I do have a couple of maps of the area that will probably, uh,  
70 kind of reference those types of things. From there we'll take a break, um, see  
71 if there's anything we need to follow up, uh, with you on, we'll come back,  
72 ask those questions. From there we'll turn it over to the members of the  
73 District Attorney's Office for any questions they may have, and then we will,  
74 um, uh, pass it over to Mr. Stern for anything that he may have. Um, if you  
75 need to take a break, use the restroom, anything like that, please let myself or,  
76 uh, Mr. Stern know, we can certainly accommodate that I'm sure.  
77

78 A: Okay, thanks.  
79

80 Q: All right. Um, so we'll start - if you can just, uh, state your name and spell it  
81 with your badge number, please.  
82

83 A: My name is Michael Clark, M-I-C-H-A-E-L, C-L-A-R-K, badge number 315.  
84

85 Q: And what is your date of hire with the Hayward Police Department?  
86

87 A: It was in, uh, I want to say July or so of, uh, 2009.  
88

89 Q: Did you have any experience, um, any other law enforcement experience prior  
90 to the Hayward Police Department?

91  
92 A: Yeah, I worked for the, uh, Stockton Police Department for just under two  
93 years before this.

94  
95 Q: And that was as a sworn police officer?

96  
97 A: Yes.

98  
99 Q: Any other law enforcement experience or, uh, military experience prior to...

100  
101 A: Yes, I was in the Marines for four years.

102  
103 Q: What did you do in the Marine Corps?

104  
105 A: Um, I was, uh, an administrator in the Marine Corps.

106  
107 Q: Did you, uh, serve overseas, any combat time?

108  
109 A: Yes, I was, uh, did one combat tour in Iraq.

110  
111 Q: Uh, do you remember about what year that was?

112  
113 A: Yeah, it was in, um, 2002 to 2003-ish.

114  
115 Q: Okay. Um, on the day of the incident what was your unit designation or call  
116 sign?

117  
118 A: I was David 34.

119  
120 Q: And does David 34 kind of, um, reference the area of town that you work and  
121 the - and the shift that you work?

122  
123 A: Correct. Uh, the David aspect is - represents the beat - the David beat. Um,  
124 and then 34, it's, uh - uh, I don't know why they came up with that  
125 designation, but the three in there indicates third watch or graveyards.

126  
127 Q: Uh, can you just kind of reference where the David beat is in the city of  
128 Hayward?

129  
130 A: Sure. It's on the, uh, northwest part of town.

131  
132 Q: And when you mentioned the graveyard shift, what - what are the actual hours  
133 that you work for that?

134  
135 A: 6:00 pm to 6:30 am.



136  
137 Q: Are those your normal hours or does that change?  
138  
139 A: It changes.  
140  
141 Q: And what are your normal, uh, shift hours that you work in a workweek?  
142  
143 A: Uh, Tuesday I work 6:00 am to 6:30 pm, on Wednesday I work, uh, 1:30 pm  
144 to 2:00 in the morning, and on Thursday I work 6:00 pm to 6:30 am Friday  
145 morning.  
146  
147 Q: Is there a team or an assignment that you, uh, are given that works those  
148 hours?  
149  
150 A: Yes, I work for - or I work on Team 7.  
151  
152 Q: And so that team's, uh, days and hours fluctuate, is that correct?  
153  
154 A: Correct.  
155  
156 Q: Okay. Uh, who are your supervisors on that team?  
157  
158 A: Uh, Sergeant Neula and Sergeant (Vonnegut), and, uh, Lieutenant (Dorn) is  
159 Watch Commander.  
160  
161 Q: Were all of those supervisors present - present on the night of this incident?  
162  
163 A: Um, Lieutenant (Dorn) was not, Sergeant Neula was not. Um, Sergeant  
164 (Vonnegut) was.  
165  
166 Q: And who is responsible out of the supervisors for the north end of town?  
167  
168 A: Sergeant (Vonnegut).  
169  
170 Q: Any other supervisors working that night?  
171  
172 A: Uh, Lieutenant, um, uh, (Cory) Linteo.  
173  
174 Q: Have you attended or received any specialized training?  
175  
176 A: Yes.  
177  
178 Q: Okay. Could you just, uh, just go over the specialized training that you have  
179 received?  
180

181 A: Uh, Field Training Officer. Um, I was in Stockton, uh, partially assigned to  
182 the Gang Investigation Unit for a short time before I left. Uh, just, uh, stuff of  
183 that nature throughout my career.

185 Q: Did you receive any specialized training in the Marine Corps?

187 A: Yes.

189 Q: Can you just describe that for us, please?

191 A: Sure. Uh, I received extensive, um, hand to hand combat training, um - um,  
192 Marine Corps Martial Arts program. Uh, received firearms instruction, um,  
193 rifle, uh, in particular, uh, various weapons that we u- utilized in, uh, the  
194 Marines, and, uh, just regular other Marine Corps training, just going to  
195 qualification with gas mask, you know, NBC, all that kind of stuff.

197 Q: Would you, uh, reference to Field Training Officer, what are your  
198 responsibilities as a Field Training Officer?

200 A: Um, I'm responsible for training, mentoring, and, um, shaping newly trained  
201 Marine - or, uh, police officers from out of the academy, showing them how  
202 to become a - a - a - a - an officer that's competent and able to work on their  
203 own on the streets.

205 Q: And the Gang Investigation Unit that you referenced in Stockton, what were  
206 your responsibilities with that?

208 A: I was just kind of a - a - a trainee at that point. I wasn't really assigned, um,  
209 any rank or titles in there. I was kind of learning the ways of, uh, what  
210 detectives do in the gang investigation at that particular point. I was basically,  
211 um, documenting gang members, um, you know, entering with the - to their  
212 database as - as they, uh, saw fit.

214 Q: Was that a, uh, uniformed or plainclothes assignment?

216 A: It was a plainclothes assignment.

218 Q: Did you actually work outside the office doing suppression or investigations,  
219 or was it mainly just...

221 A: Just in...

223 Q: ...documenting what you talked about?

225 A: Just - yes, just documenting.

226  
227 Q: Have you been assigned - I know you - you referenced the Gang Unit - but in  
228 addition, have you been assigned any specialized units, uh, our, uh, Hayward  
229 Police Department's Gang Unit, Narcotics, the, uh, Special Response Unit, uh,  
230 School Resource Officer, anything like that?  
231  
232 A: Nope.  
233  
234 Q: When's the last shift that you worked prior to the shift of the incident?  
235  
236 A: Uh, Wednesday swing shift, 1:30 to 2:00 am.  
237  
238 Q: Do you work any secondary jobs or did you work any extended hours on that  
239 Wednesday?  
240  
241 A: No and no.  
242  
243 Q: Had you consumed any alcoholic beverages pr- in the previous 24 hours to the  
244 incident shift?  
245  
246 A: Yes, I had a beer after work on, uh, Wednesday, and then, uh, (unintelligible)  
247 Friday morning.  
248  
249 Q: Just a single like 12-ounce beer?  
250  
251 A: Just - yes - yes.  
252  
253 Q: And that was immediately following your shift on Wednesday?  
254  
255 A: Uh, it was in the morning, about 9 o'clock.  
256  
257 Q: Do you have any medical conditions that would impact your judgment or  
258 physical abilities?  
259  
260 A: No.  
261  
262 Q: Uh, when's the last time that you slept prior to the, um, incident shift?  
263  
264 A: That evening, after work.  
265  
266 Q: Uh, can you just provide for us how long or a duration?  
267  
268 A: About five hours, six hours.  
269  
270 Q: Did you receive any injuries as a result of this incident?

271  
272 A: No.  
273  
274 Q: Do you wear glasses or contacts?  
275  
276 A: I wear contacts.  
277  
278 Q: Did - were you wearing those contact lenses on the night of the incident?  
279  
280 A: Yes, sir.  
281  
282 Q: Do you have any other vision problems?  
283  
284 A: No.  
285  
286 Q: What class uniform were you wearing on the night of the incident?  
287  
288 A: I was wearing a Class B uniform, which is a PDU, I believe is what they call  
289 'em.  
290  
291 Q: Were you photographed in that uniform?  
292  
293 A: Yes, sir, I was.  
294  
295 Q: Do you wear your ballistic vest, um, as an external carrier or inside your  
296 uniform shirt?  
297  
298 A: Inside my uniform.  
299  
300 Q: Moving down to your duty belt, if you start at the center of your belt, work  
301 around your right side, behind your back, through your left side, back to the,  
302 um, center of your belt, could you start with the equipment that's on your  
303 belt?  
304  
305 A: Sure. From right to the left, ah, from right to behind - behind my body, I have  
306 my handcuff case, double-handcuff case, um, followed by a, um, I believe it's  
307 just my, uh, pistol on my right, and behind that I have, uh, pepper spray, then  
308 in the back I have a flashlight, and then on my left side I have, um, a baton  
309 ring, uh, my radio, and then I have a magazine pouch. It's in front that you  
310 wrap around.  
311  
312 Q: How many magazines do you carry in that pouch?  
313  
314 A: Two.  
315



316 Q: Were you wearing a body-worn camera?

317  
318 A: Yes, I was.

319  
320 Q: Did you activate it during this incident?

321  
322 A: I did.

323  
324 Q: Was there any damage to your uniform or equipment during the incident?

325  
326 A: Uh, no damage. My boots got collected but there's no damage to anything.

327  
328 Q: Um, are you issued or do you carry a, um, department Taser?

329  
330 A: Oh, I'm sorry, yes. I - I forgot about the Taser. That's, uh, on my left side as  
331 well by my radio pouch.

332  
333 Q: And then to a little bit about the firearm that you carry. Uh, what is the make  
334 and mod- and model of that firearm?

335  
336 A: It's a Sig Sauer P320, 9 millimeter.

337  
338 Q: Is that a department-issued gun?

339  
340 A: Yes, it is.

341  
342 Q: Are there any special modifications to the sights or a flashlight, anything to  
343 the grips itself?

344  
345 A: No, nothing at all.

346  
347 Q: The ammunition that you had in your firearm, was that department issued?

348  
349 A: Yes, sir.

350  
351 Q: Do you know the number of rounds that were in the magazine in the weapon?

352  
353 A: 17 in the magazine and one in the chamber.

354  
355 Q: And how many rounds go in the magazine that you carry on your duty belt in  
356 addition?

357  
358 A: That is 17 as well, each.

359  
360 Q: What was the last qualification date?

361

362 A: Um, gee, let's see, last month I think.

363

364 Q: Um, in addition to the department-issued firearm that you had, were you  
365 carrying any backup weapons or knives?

366

367 A: No. Um, I have a knife, I'm sorry, in my vest but no - no gun, no backup gun.

368

369 Q: Can you describe the knife that you carry that's in your vest?

370

371 A: Sure, it's a, uh, just a pocketknife. It's, um, foldable and, uh, I have that, um,  
372 in the little, uh, belt clip that I fasten to the inside of my vest.

373

374 Q: No other backup weapon?

375

376 A: No.

377

378 Q: Uh, what was the vehicle number, make and model that you were driving the  
379 night of the incident?

380

381 A: It was a Ford Explorer. It was, uh, vehicle number 275, I believe.

382

383 Q: Is that your - the vehicle that you normally drive?

384

385 A: No.

386

387 Q: Is that a fully marked, uh, Hayward Police vehicle?

388

389 A: Yes.

390

391 Q: Can you just describe the markings on it and the, uh...

392

393 A: Sure.

394

395 Q: ...emergency equipment?

396

397 A: It's a black and white with, uh, fully marked doors with Hayward Police  
398 Department insignia on it. Uh, it says Hayward Police Department on the  
399 back, ah, and it's got a light bar, and, uh, emergency sirens, all of which were  
400 working at the time of the - the shift.

401

402 Q: Is that light bar mounted, um, on the exterior?

403

404 A: Yes.

405

406 Q: Did you activate the emergency lights or siren, um, while responding to or  
407 actually on the scene itself?  
408  
409 A: Yes, I did, the, uh, emergency lights.  
410  
411 Q: When did you activate the emergency lights?  
412  
413 A: Um, at the intersection of Whitman and Jackson.  
414  
415 Q: Just to go through the intersection or did you leave them on?  
416  
417 A: No, just, uh, for that, clearing that one intersection.  
418  
419 Q: Okay. Did you activate the light at all when you arrived on scene?  
420  
421 A: Um, I - I don't recall, no. If I did it would have been just to put on my back  
422 lights to warn cars that I was there, but I don't recall if I did that or not.  
423  
424 Q: Did you activate, uh, spotlights or anything...  
425  
426 A: Yes.  
427  
428 Q: ...when you're on the scene?  
429  
430 A: I had a spotlight on.  
431  
432 Q: Uh, the driver's side, passenger side or both?  
433  
434 A: Driver's side.  
435  
436 Q: Okay. Were you the only officer in that vehicle?  
437  
438 A: Yes.  
439  
440 Q: Did not have a ride along?  
441  
442 A: Correct.  
443  
444 Q: We're gonna, ah, go from there to just kind of scene conditions. Can you  
445 describe the location of the shooting?  
446  
447 A: Yeah, it was, uh, in mid-block O'Neil, um, which is a city street that has, uh,  
448 residential homes as well as a well-known apartment complex in the area, uh,  
449 just down the street from the incident.  
450



451 Q: What was the weather conditions that day?

452  
453 A: Um, it was clear, um, it was like normal temperature, it wasn't cold, it wasn't  
454 hot. It was, um, the air condition was pretty bad from the smokes from the  
455 fires.

456  
457 Q: Can you describe the lighting conditions at the scene?

458  
459 A: Um, it was a dark street. Um, it is, uh, the street does have, um, streetlights,  
460 but I recall it being illuminated more or less by headlights and spotlight.

461  
462 Q: Um, in addition to street lighting, is there any residences or businesses or such  
463 that have any type of artificial light?

464  
465 A: Yeah, there's, uh, some of the residents have street - oh, I'm sorry, uh, porch  
466 lights.

467  
468 Q: All right. So we've come to the point, um, like I discussed earlier about kind  
469 of the prenarrative of the event. So if you can start by just describing for us,  
470 um, how you became aware of this incident, where you responded from, how  
471 you kind of got there. Um, obviously anything that you remember about radio  
472 traffic or, um, dispatch information, um, obviously once you arrive on scene  
473 what kind of transpires from there and then, uh, obviously walk through the  
474 incident itself.

475  
476 A: Sure. Um, it was roughly around 9 o'clock. Um, I was parked, um, underneath  
477 the, uh, overpass at the dead end of Review Way. Uh, the call came out, it was  
478 a single beep, a tone, which basically our dispatchers use to bring to our  
479 attention that there's a significant incident in progress. Um, then I heard  
480 dispatch, uh, advise that there was a Hispanic male with a knife, um,  
481 threatening people on, um, O'Neil and Orchard area. So being that half of our  
482 team was gone that day, we had a lot of overtimers on the shift, I attached to  
483 the call, uh, to go help out in any way I could, and so I responded from  
484 Review and I drove, uh, drove normally, uh, and then I got to Jackson and  
485 Whitman, wanted to make sure I got there, so I turned my - activated my  
486 emergency lights to clear the intersection. I drove, um, uh, I went eastbound  
487 on Jackson. I hooked a right going southbound onto Silva. From Silva it  
488 comes into - it kind of dead ends into, uh, Sycamore, so I - I had hooked a left  
489 on Sycamore, and then, uh, a right onto Whitman. From Whitman to Mardie,  
490 and Mardie takes you to Joanne, Joanne to Orchard, and then right there is the  
491 intersection of Orchard and, uh, and, um, O'Neil. And then, uh, after I got to  
492 the - to the intersection of O'Neil and Orchard, um, I heard Sergeant DeCosta,  
493 uh, and Officer Wooley say they were getting flagged down, um, and Sergeant  
494 DeCosta put out like the name of the apartment complex, uh, on O'Neil, but  
495 I'm not familiar with the numbers off the top of my head. So I, uh, went



496 northbound onto O'Neil. I drove, I saw a police car parked along the side of  
497 the road and - and (unintelligible) was in it. Um, then as I get to, uh, another  
498 police car, I believe it was Officer Wooley's, um, that's when I - I get out of  
499 the car and I see, um, Officer Wooley off to my left, and then I see, uh, I don't  
500 - I didn't see Sergeant DeCosta. I don't know where she was at that particular  
501 point. I know she was there but I didn't - like I don't remember where she was  
502 in proximity to us. Um, as I get out of my car I start walking towards the front  
503 of Officer Wooley's car, and that's when I see, um, uh, a gentleman wearing a  
504 red and black, uh, like Pendleton, um, walking at - with a methodical - at a  
505 methodical pace, like, uh, just walking with - towards Officer Wooley with his  
506 hand extended out. Um, and so therefore, uh, I believed that he was - and I  
507 heard Officer Wooley telling me that - "Put down the knife, put down the  
508 knife." He sh- he told us that he had a knife, um, and so after the guy was  
509 approaching Officer Wooley, I believed that Officer Wooley's life was in  
510 danger, and so I delivered, uh, two rounds I believe and stopped threat, and  
511 then, uh, from there, I went and, uh, put him in handcuffs, and then Officer  
512 Gillett took over and, uh, and, uh, rendered medical aid until fire department  
513 and police, uh, um, paramedics were coming in and continue, uh, medical  
514 procedures.  
515

516 Q: All right. So, ah, you went over a lot so we're gonna kind of go back and  
517 break it down from there. So you said it was about, uh, 9 o'clock at night, so  
518 2100 hours?  
519

520 A: Correct.  
521

522 Q: And then you said you were at the dead end of Review and then you heard a  
523 beep tone?  
524

525 A: Yeah.  
526

527 Q: And you described that as a significant incident. For somebody's who's not  
528 aware, could you just describe what you would reference as a significant  
529 incident?  
530

531 A: Sure. When dispatch tones us, um, and gives us that beep, so to speak, it's to  
532 bring it to the police officer's attention that there's a significant attempt, like a  
533 robbery or stabbing or shooting or something that requires immediate  
534 attention.  
535

536 Q: Could that be referred to as like a priority incident?  
537

538 A: Absolutely.  
539

540 Q: Okay. And then you noted that the initial dispatch was a Hispanic male with a

541 knife?

542

543 A: Correct.

544

545 Q: Do you recall anything else about what was being said in regards to the, uh,  
546 the call that was coming out?

547

548 A: Just that he was, uh, out on foot on the street, and he was, uh, walking around  
549 threatening people with a knife.

550

551 Q: In your mind when you hear that somebody's threatening somebody with a  
552 knife, um, how did that change your response to the incident?

553

554 A: Um, that it ups the ante because like it - it requires a - a response or we're  
555 getting there in a hurry, you know what I'm saying, we're - we're radio -  
556 monitoring the radio. Um, it's - it's a necessary thing to get there in a timely  
557 manner, basically.

558

559 Q: In addition to being threatened with a knife, were you made aware of or was  
560 there any talk of somebody actually being harmed with the knife itself?

561

562 A: No, not that I can recall at the, uh, at the - the original dispatch.

563

564 Q: Okay. Was there any description besides, "Hispanic male with a knife," given  
565 out?

566

567 A: I believe they gave a - a clothing description, um, Hispanic male with blue  
568 jeans and, um, I believe they said red color shirt.

569

570 Q: Was the knife ever described in the radio dispatch?

571

572 A: Not that I can recall.

573

574 Q: Was it ever referenced as anything other than a knife?

575

576 A: Not that I can recall.

577

578 Q: You noted that you attached - can you just describe for us what attached  
579 means?

580

581 A: Sure. Um, attached basically means that I wasn't initially dispatched, being  
582 called over the radio. Um, so - but like I said because our team was more or  
583 less - there was three regular Team 7 members on the team that particular  
584 night, so to avoid, um, one of my beat partners that was working overtime had  
585 to take some, um, significant paper, perhaps I attached to it meaning, um, I -

586 there was a call created and obviously it got dispatched, and then I used my  
587 computer and I just attached to it. I don't know how to explain it. I just  
588 basically - you can attach to your call, and so I - I attached to this one, and I  
589 started heading to the scene.  
590

591 Q: So when you say attached, the computer allows you to tell the dispatcher  
592 through the computer that you're en route to that call?  
593

594 A: Correct.  
595

596 Q: Okay.  
597

598 Q1: Self dispatch?  
599

600 A: Self dispatch.  
601

602 Q: So you described your, uh, your route, um, that you went. Um, as you're  
603 responding, is anything else being put out about this call over the radio?  
604

605 A: Yeah, it was just that he - there - it was continuing that this guy was still out  
606 and he had a knife - well, it was a - I don't recall the - the details but I  
607 remember that it was - in my mind I'm thinking this is significant, this guy's  
608 been out here for a while now, you know, and so, uh, it was, uh, it was an  
609 ongoing situation, so...  
610

611 Q: What's kind of your thought process there? Are you preparing tactics or are  
612 you concerned about anyone being harmed as you're responding to this  
613 incident?  
614

615 A: Yeah, absolutely. I'm - I'm concerned for the public, I'm concerned for my  
616 partners that are gonna be there, if they get there before me. Um, so just, you  
617 know, anytime you get a call with, ah, someone armed with a knife, I - I think  
618 it naturally - it bugs some kind of degree of, um, fear for the public, fear for  
619 the, you know, safety of anyone in that sense.  
620

621 Q: And why would you be concerned about safety with a knife reference?  
622

623 A: Because you can get stabbed, you can get hurt. You know, citizens can get  
624 hurt.  
625

626 Q: In your training and experience as a police officer, did you respond to  
627 anything involving a knife before where somebody's been injured?  
628

629 A: Yes.  
630



631 Q: And what are some of those injuries that you've seen?

632  
633 A: Multiple stabbings throughout the - throughout my career. I've been a police  
634 officer for 11 years. Um, so, you know, I've seen firsthand the destructive  
635 damage that a knife, you know, inflicted knife wounds can do, so like so, you  
636 know, obviously I was concerned about that aspect.

637  
638 Q: You ever seen a knife or an edged weapon cause somebody's death?

639  
640 A: Yes.

641  
642 Q: Um, any great bodily injuries caused by a knife or edged weapon?

643  
644 A: Yes.

645  
646 Q: You noted, um, either as you were responding or rather as you're arriving that  
647 Sergeant DeCosta and Officer Wooley are putting out that they're flagged  
648 down. Could you just describe for us what you meant by that?

649  
650 A: Sure. Uh, basically a citizen, um, waved them down and said, "Hey, here's  
651 where the guy is," here's what - I don't know exactly what the circumstance  
652 was 'cause I can't speak on behalf of them, but I remember, um, them  
653 updating on the radio that they were being flagged down, basically stating that  
654 some citizen was bringing to their attention that the threat was within close  
655 proximity to them.

656  
657 Q: And you noted that, um, from there you drove northbound on O'Neil, and  
658 that's right off - from Orchard, is that correct?

659  
660 A: Yes.

661  
662 Q: That you were going down?

663  
664 A: Yes.

665  
666 Q: And then you pass a, uh, police car that's parked. Do you know whose police  
667 car that was that you passed?

668  
669 A: I don't know definitively. I - if I were, um, just kind of looking back at the  
670 situation I would say it was probably Sergeant DeCosta's.

671  
672 Q: But you're not sure of that?

673  
674 A: Right.

675



676 Q: Is that correct?

677  
678 A: I don't - yeah, I don't know 100% it was Sergeant now. Seems reasonable that  
679 it would be her car.

680  
681 Q: And then, uh, you know that you passed a second car which you believed was  
682 Officer Wooley's, is that correct?

683  
684 A: That's correct.

685  
686 Q: How did you position your patrol unit in comparison to Officer Wooley's?

687  
688 A: Uh, slightly off behind him, um, to his right side, uh, but, uh, parked behind  
689 him and I stopped right in the middle of the street.

690  
691 Q: And at what point do you activate the, uh, driver's side spotlight that you  
692 referenced earlier?

693  
694 A: Um, it was on Orchard and O'Neil, right at the corner there, as I pulled on  
695 scene.

696  
697 Q: So your spotlight's on as you're driving up the street?

698  
699 A: Yes.

700  
701 Q: I'll show you a map. Um, so this is a Google Map image. Um, the top of the  
702 paper is kind of northbound in the city, bottom is south. Um, as you'll see,  
703 um, kind of in the middle here is O'Neil Avenue running kind of, uh,  
704 northwest, southeast.

705  
706 A: Okay.

707  
708 Q: Um, off to the east of that is Mission Boulevard. Um, at the very bottom is,  
709 uh, Orchard. Do you recognize that area of town?

710  
711 A: I do.

712  
713 Q: Okay. Can you take, uh, this red marker here and just indicate with an X  
714 where you stop your patrol vehicle?

715  
716 A: It seems to me it was mid-block somewhere.

717  
718 Q: Okay. And, um, I'll show you a second map image. This is a closer up image  
719 of, uh, the same, but again, um, the top of the paper is, uh, heading north,  
720 bottom's facing south. This is O'Neil in the middle. Um, off to the east you'll

721 see a bunch of cars. Do you recognize the cars off to the east side of the  
722 picture here?  
723

724 A: That's a dealership, car dealership.  
725

726 Q: Okay. Um, in the very middle there is two diamonds in the, um, middle. I  
727 believe that's a speed bump.  
728

729 A: I know...  
730

731 Q: Do you recognize that?  
732

733 A: Um, I recognize it from the picture. I don't recall the speed bump...  
734

735 Q: Okay.  
736

737 A: ...here having anything to do with this particular case.  
738

739 Q: Okay. Uh, when you look at this kind of zoomed in picture, does that help  
740 kind of refresh your recollection as to where you parked your patrol vehicle?  
741

742 A: Not really, I mean I'm very familiar with O'Neil, but I mean I can tell you  
743 everything about O'Neil from - based on memory, but it just - I don't  
744 remember exactly where in proximity on this looking at this picture.  
745

746 Q: Okay. Understandable. So what I'm gonna do is I'm gonna go back to this  
747 first picture where you indicated the X. Uh, can you just kind of indicate on  
748 there where, uh, with maybe a - a square, where, um, Officer Wooley's  
749 vehicle is in relation to yours?  
750

751 A: Sure. So I'm the X, Officer Wooley's car would have been, um, uh, like  
752 directly right in front of me.  
753

754 Q: Okay. So you noted, um, that you arrived on scene, you stopped, um, to the  
755 right of and behind Officer Wooley's vehicle and you get out. Um, what is  
756 kind of the first thing that your attention is drawn to when you exit your  
757 vehicle?  
758

759 A: First thing I - I'm - I'm drawn to is that there's kind of this - this general sense  
760 of chaos going on. Uh, there's people, um, I hear - I don't hear what they're  
761 saying in pic- particular but I hear people kind of like frantic, and then I see  
762 this - this gentleman coming after Officer Wooley with something, you know,  
763 with his hands out and matched the description of what we're getting sent out  
764 there to look for. And, um, then, you know, that's, uh, that's just kind of some  
765 of the overall - it was kind of a sense of chaos when we got on the scene

766 quick.

767  
768 Q: So you described the - you described the people as frantic. What about them  
769 was frantic? Were they yelling or screaming, or were they crying? What were  
770 they doing that made you believe they were frantic as you referenced?

771  
772 A: Just they were, um, there were people just kind of just milling about the area  
773 that, you know, based on, you know, normal standards that a lot of people  
774 aren't gonna be out on the street at 9 - 9 o'clock at night, you know, and there  
775 was - it seemed like there was a - a pretty good crowd as, uh, there was  
776 something that made - made people come out, and there was just this kind of  
777 just general sense of like people talking loud, um, you know, just - just kind of  
778 like big curious - curiosity as well. You just - I don't know, I don't know how  
779 to say it, just - just seemed like - like an abnormal situation. People were just  
780 kind of, um, uptight.

781  
782 Q: Okay. So you described that you walked to the front of Officer Wooley's car,  
783 and then, um, I think you said that you saw the suspect?

784  
785 A: Correct.

786  
787 Q: Okay. What about him made you realize that this is the suspect or the person  
788 that you're responding to this call for?

789  
790 A: Um, because I heard Officer Wooley giving commands, uh, and then I saw  
791 him, and he matched the description, um, of the - of the detail and, uh...

792  
793 Q: What about him matched the description?

794  
795 A: He had a black and white Pendleton on. Uh, he was a Hispanic male. Um, and  
796 heavyset. He just - it was very obvious to me that he was, um, the person that  
797 was armed with a knife, and especially since he was - I have - I heard Officer  
798 Wooley say, "Hey, he's - he's - he's got the knife in his hand," and, ah,  
799 something to that effect and he was walking, um, not obeying any commands  
800 that Officer Wooley was giving him, and he was walking with purpose, uh,  
801 that I know from my training and experience was, um, indicative to me that he  
802 was a - a very viable threat at that point to Officer Wooley.

803  
804 Q: So, um, as you walk around the front of Officer Wooley's car, uh, how far is  
805 the suspect from you, first?

806  
807 A: From me? Uh, 10, 15 feet.

808  
809 Q: And how far is the suspect from Officer Wooley?

810



811 A: Probably the same distance.

812  
813 Q: So I know that you said you're hearing Officer Wooley give commands. What  
814 are the specific commands that you remember hearing?  
815

816 A: Uh, "Drop the knife," something along those lines. He was giving him, uh,  
817 commands to put - put the weapon down and, uh, and then I - I heard - after  
818 that I heard Officer Wooley say "He's got the knife, um, he's got the knife,"  
819 and so that was the things I heard.  
820

821 Q: Okay. Now when you are hearing Officer Wooley give these commands, do  
822 you see anything in the suspect's hands?  
823

824 A: I saw his hand out and walking, um, at Officer Wooley, but I - I couldn't - I  
825 didn't specifically see something in his hands at that particular, but I saw it  
826 that he had his hands extended towards Officer Wooley.  
827

828 Q: So you're - for the audio you're, um, kind of - you've got your hands together  
829 and you're kind of extended, pushed out away from your body?  
830

831 A: Correct.

832  
833 Q: And are his hands pointed towards Officer Wooley?  
834

835 A: Yes.

836  
837 Q: Okay. Now with his hands pointed out towards Officer Wooley, what is he  
838 doing from there?  
839

840 A: From there he's walking, um, with just, uh, the only way I can describe it, he  
841 had this like blank stare on his face where he just - you can tell he did not care  
842 about - he wasn't gonna follow instructions. It seemed to me that he had a  
843 purpose, and his purpose was very simply to walk towards Officer Wooley  
844 and - and harm him or harm himself as a result of walking towards Officer  
845 Wooley.  
846

847 Q: Is he saying anything at any point?  
848

849 A: I did not hear anything at, uh, from - from him at the time.  
850

851 Q: Do you hear anyone else out on the street say anything?  
852

853 A: I was - I - I wasn't - I didn't hear anybody at that time. There may have been  
854 but I don't recall.  
855



856 Q: Okay. Your - so your mindset as you're going around the front of the car and  
857 Officer Wooley is shouting his commands though, is that this person's armed  
858 and he's advancing on Officer Wooley, is that correct?  
859

860 A: That's correct, sir.  
861

862 Q: At what point do you draw your firearm?  
863

864 A: Uh, as soon as I see him advancing on Officer Wooley, I - I unholstered and,  
865 um...  
866

867 Q: As you're drawing your firearm and you're - are you walking towards the  
868 subject at this point or are you stopped?  
869

870 A: I had stopped at, uh, on the passenger's side of Officer Wooley's car but at the  
871 front of the hood.  
872

873 Q: Are you giving any type of commands or...  
874

875 A: Uh, no, I didn't, but can I backtrack a minute?  
876

877 Q: Ab- absolutely.  
878

879 A: I just thought of something in regards to the speed bumps, uh, now that you  
880 mention it.  
881

882 Q: Okay.  
883

884 A: Uh, it was directly on the speed bumps because I remember, uh - uh, marking  
885 my shell casings with an FI card and they were in-between two speed bumps,  
886 so - so in now, looking back, looking at it, um, at that picture, it was directly  
887 on the speed bumps.  
888

889 Q: Okay. So if I show you the second picture...  
890

891 A: Yeah.  
892

893 Q: ...the speed bumps that you reference you're actually on top of those speed  
894 bumps?  
895

896 Q1: Turn it around.  
897

898 Q: Oh, thank you.  
899

900 A: Sorry, I didn't mean to interrupt but...

901  
902 Q: No, that's actually fine.  
903  
904 A: But, uh, it just total - it made, uh, my memory come back.  
905  
906 Q: Okay. So you draw your firearm, you stop at the, um, on the passenger side at  
907 the front of the hood. Do you feel at this point in time that you had any other  
908 force options available to you?  
909  
910 A: No, no. It was very quickly, um, evolving. Um, there was absolutely no time  
911 to, um, do anything other than deliver rounds to protect what I felt was Officer  
912 Wooley's life.  
913  
914 Q: So your mindset is that you're protecting the life of Officer Wooley at this  
915 point in time?  
916  
917 A: 100%.  
918  
919 Q: Do you fear for your own safety at any point?  
920  
921 A: Um, not - I didn't directly feel like I was like the target, per se, but there was  
922 always that outlying thing in your mind that, hey, this could eventually very  
923 quickly come in my direction, but at the time it was - it was literally just  
924 because I - I felt Officer Wooley's life was in danger.  
925  
926 Q: Where are the other people that you described, um, earlier in relation to where  
927 this is taking place?  
928  
929 A: Um, there's people gathered out on the sidewalk to, uh, to my left, Officer  
930 Wooley's left.  
931  
932 Q: All right. So they're away from this su-subject though that you're contacting  
933 or that Officer Wooley is engaged with?  
934  
935 A: Yes.  
936  
937 Q: Okay. Did the subject ever turn to you at any point or make any type of either  
938 verbal or eye contact with you?  
939  
940 A: No.  
941  
942 Q: So it's at this point you fire your - or discharge your firearm, is that correct?  
943  
944 A: That's correct.  
945

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946 Q: Okay. How many rounds do you believe you fired?  
947  
948 A: Uh, I know for certain two, um, possibly a third.  
949  
950 Q: As you're firing these rounds, are you assessing?  
951  
952 A: Assessing?  
953  
954 Q: What's going on or what's - what's the - as you're firing the rounds, were you  
955 assessing what the, uh, suspect is doing?  
956  
957 A: Yes.  
958  
959 Q: Okay. Can you describe that as you're firing these rounds what happens with  
960 the subject?  
961  
962 /  
963  
964 A: Sure. Um, as I'm delivering my rounds, um, I'm making sure that the suspect,  
965 that the rounds are being delivered effectively so that the stop - the threat is  
966 being stopped, and it appeared that after the rounds were delivered, that it did  
967 the intended purpose, it stopped the threat.  
968  
969 Q: And how are you made aware that the - or how are - how do you feel that the  
970 threat is stopped? What - what - what happens that makes you believe that?  
971  
972 A: He stopped his advance and he - he eventually fell to the floor - the ground  
973 rather.  
974  
975 Q: As this is kind of transpired, are you aware that Officer Wooley is firing, or do  
976 you believe that Officer Wooley fired during this incident?  
977  
978 A: Yes.  
979  
980 Q: Is anyone else on scene with you at this point in time?  
981  
982 A: Just Sergeant DeCosta, but I - like I said earlier I don't remember where she  
983 was at proximity to us at the time but I knew she was there.  
984  
985 Q: But as far as you're aware at this point in time, as you're engaging the subject,  
986 it is just you and Officer Wooley?  
987  
988 A: Correct.  
989  
990 Q: So after you fire your rounds and, uh, the subject has fell - or fallen to the

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991 ground, what happens after that?  
992

993 A: At that point I, uh, I looked over to - to make sure that Officer Wooley was  
994 okay, um, and then I - I told him that, uh, I was gonna go and I was gonna go  
995 to the suspect, I was gonna put handcuffs.  
996

997 Q: And what was your intention in placing him in handcuffs or what - what were  
998 you thinking as to why you would handcuff the subject?  
999

1000 A: Um, it - it's just something that I was trained to do and it was twofold, it was -  
1001 that's what I was trained to do, um, in fact in my beginning years of policing,  
1002 and then also I just wanted to make sure that that - that was no - he was no  
1003 longer a threat if I had his hands accounted for, so to speak in handcuffs, then  
1004 - then there was actually no option of, you know, retrieving the knife and so  
1005 on.  
1006

1007 Q: Do you handcuff by yourself or is somebody else with you at this point?  
1008

1009 A: Um, I go - I advance and - and then I start to handcuff him by myself initially  
1010 and then Officer Gillett showed up within seconds and assisted me.  
1011

1012 Q: What happens after you handcuff him?  
1013

1014 A: Um, after I handcuff him, I stepped away. I kind of went and checked on Phil,  
1015 um, made sure everything was okay with Officer Wooley and then, uh, um,  
1016 kind of just took a step back. Um, I helped to some degree with monitoring  
1017 traffic and people who were coming out, telling people to turn away. The -  
1018 there's people right, you know, that were in the area that I was asking to step  
1019 away from the scene, um, until I was relieved of my duties.  
1020

1021 Q: When you say you checked Officer Wooley, did you actually have a  
1022 conversation about what had just transpired?  
1023

1024 A: Um, not in detail, just, uh, just I general, "Hey, are you okay?" You know.  
1025 "Are you good?" He's like, "Yeah, are you okay?" I said, "Yeah," and then,  
1026 uh, basically, um, it was - it was pretty clear as to what happened. There was  
1027 no reason to talk about it per se.  
1028

1029 Q: Um, are you aware that Officer Gillett did anything after handcuffing...  
1030

1031 A: Yeah, he just...  
1032

1033 Q: ...or assisting you with handcuffing?  
1034

1035 A: He was, um, uh, doing like - he was provided medical care to him to some

1036 degree, as best he could.

1037  
1038 Q: Do you know if medical assistance was summoned or are you aware...  
1039

1040 A: Yes, I remember Officer Wooley asking for, uh, to start Fire and the  
1041 ambulance.  
1042

1043 Q: Did you have any conversations with anyone besides Officer Wooley about  
1044 what had happened at the scene?  
1045

1046 A: Um, no, no. I, uh, talked to Sergeant (Vonnegut), he came and checked on us.  
1047 Uh, he asked the - the basic questions that any supervisor does, uh, what I was  
1048 involved, roughly how many rounds were delivered, which direction, and then  
1049 at that point I was assigned to, uh, Officer Whites who escorted me back to  
1050 the police department.  
1051

1052 Q: The questions that Sergeant (Vonnegut) asked you, have you ever ref- ah,  
1053 heard them referred to as public safety questions?  
1054

1055 A: Yes.  
1056

1057 Q: Is that essentially what he did?  
1058

1059 A: Yes, 100%.  
1060

1061 Q: Now I noted that - or, uh, you noted earlier that you placed, uh, index cards or  
1062 something over your casings?  
1063

1064 A: Yes.  
1065

1066 Q: Okay.  
1067

1068 A: Um...  
1069

1070 Q: When did you do that?  
1071

1072 A: Within a few minutes of the scene, um, two to three minutes.  
1073

1074 Q: And you said you placed two index cards? You had located two casings?  
1075

1076 A: Yes, and they were, uh, directly - if you're looking at this picture, trying to get  
1077 reference through there, they were, uh, in between the, uh, I guess the flat  
1078 portion of the - in-between the two speed bumps basically so the lower - the  
1079 actual part of the street, not the raised part of the speed bumps.  
1080

1081 Q: Um, when you handcuffed the - the suspect, um, did you get a look at him?

1082  
1083 A: Um, just vaguely. I - I - I looked at his, uh, I noticed that he was - he was  
1084 Hispanic, heavyset, you know, um, probably I would say, based on looking at  
1085 him, um, probably mid-30s.

1086  
1087 Q: Did you recognize that person as someone that you'd ever had contact with  
1088 before?

1089  
1090 A: No.

1091  
1092 Q: Do you recognize the name Agustin Gonzalez?

1093  
1094 A: No, I don't.

1095  
1096 Q: I'm gonna show you a photograph. It is a little old, but do you recognize the  
1097 person in that photograph?

1098  
1099 A: No, I've never seen him before.

1100  
1101 Q: Can you just indicate that you do not recognize the person on there and sign it  
1102 for me, please. And then if you can date it as 11/18/18. Thank you. Um, are  
1103 you aware of any, uh, knives or - or other weapons that were recovered at the  
1104 scene or...

1105  
1106 A: Yeah, there was a...

1107  
1108 Q: ...(unintelligible) the scene?

1109  
1110 A: ...there was a box cutter that was directly underneath him and then...

1111  
1112 Q: You actually physically saw that?

1113  
1114 A: Yes.

1115  
1116 Q: And that was, um, underneath his body you said?

1117  
1118 A: Correct.

1119  
1120 Q: You said you rolled him over. What was the purpose of rolling him over?

1121  
1122 A: Um, well he was in a - a position where he was lying on his side and so I  
1123 couldn't - his - his hand was underneath him on his right side so I rolled him  
1124 over so I can basically get his - his right hand free so I could continue to  
1125 handcuff him.



1126  
1127  
1128  
1129  
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1170

Q: Okay. I'm gonna show you a photograph. It's a crime scene photograph. Do you recognize the object in that photograph?

A: Uh, it's a little - it looks like a razor blade.

Q: Okay. Do you recognize that razor blade from the scene?

A: No.

Q: Okay. Anything further?

Q1: Yeah, so, um, going back to the original call type, do you recall, was it given a designation either via Penal Code section or a typed code radio section?

A: I want to say it was a 417, Penal Code section 417.

Q1: And what is that?

A: Brandishing a weapon.

Q1: So in your mind, once you're dispatched to this event, you are responding to a criminal event?

A: Yes, sir.

Q1: And what was your - I know you kind of touched on it, and again, what was your mindset as you received updates on - responding to this call, did that change your mindset as far as tactics go or once you arrived on the scene?

A: Yes. Um, just because of the fact that it was - it was just continuing, it was just - that the - the problem never solved itself or ceased prior to my arrival, so at that point I'm thinking, okay, we really do have a - a credible threat here, and so, um, obviously you - you start thinking of the proper protection for yourself, for the citizens, for, you know, your - your partners, and not necessarily in that order, but generally just - you start thinking of, um, if this is a threat, what do you do to eliminate this threat, you know, uh, to stop the threat, to, you know, uh, one way or another, so...

Q1: What was the mention of the weapon used in this incident?

A: A knife.

Q1: Was it ever described as anything other than a knife?

1171 A: I don't recall.

1172  
1173 Q1: And based on your training and experience, uh, we talked about are you  
1174 familiar with what kind of injuries one could sustain, uh, assaulted with a  
1175 knife or an edged object, correct?

1176  
1177 A: Correct.

1178  
1179 Q1: Um, did you use your spotlight to illuminate the suspect?

1180  
1181 A: Uh, my spotlight was on. Um, I - I can't rem- I - I don't recall if it was - if I  
1182 pointed it directly at him, I think it was just on.

1183  
1184 Q1: And my understanding is that you ran up the passenger side of Officer  
1185 Wooley's vehicle?

1186  
1187 A: Yes.

1188  
1189 Q1: Uh, so it - were you able to see the suspect the entire time or what - at what  
1190 point were you able to actually physically see the suspect?

1191  
1192 A: Uh, as soon as I exited my car I saw him, uh, coming at Officer Wooley, so  
1193 that's when I approached the front of from his car, um, which was only a few  
1194 feet away from my - from my door basically.

1195  
1196 Q1: So did you ever lose sight of the suspect?

1197  
1198 A: No.

1199  
1200 Q1: Okay. Um, was he illuminated, the suspect?

1201  
1202 A: Yes, by headlights.

1203  
1204 Q1: Of?

1205  
1206 A: A police car.

1207  
1208 Q1: Do you recall whose car?

1209  
1210 A: Um, both of ours.

1211  
1212 Q1: Okay. Uh, going to, you know, um, you said there was like people, frantic. Do  
1213 you recall where those people were at?

1214  
1215 A: Uh, on the sidewalks. Um, uh, within close proximity, I'd say probably

1216 within, you know, uh, within the first two, three houses, people in the general  
1217 area. They had kind of gathered around - from what it looked like to me when  
1218 I got on scene, that the suspect was - had been out there for a while and that he  
1219 drew a crowd of some sort...

1220  
1221 Q1: Okay.

1222  
1223 A: ...so, um, it appeared that that - they were out there as a result of something  
1224 that happened prior, you know, that he generated a crowd somehow or  
1225 another.

1226  
1227 Q1: Do you believe that these people that came out were at risk?

1228  
1229 A: Oh, yes.

1230  
1231 Q1: Now you say based on training and experience, um, he walked with a  
1232 purpose?

1233  
1234 A: Yes.

1235  
1236 Q1: Have you ever heard the term of what's called a pre-assault indicator?

1237  
1238 A: Yes.

1239  
1240 Q1: Would this fall under that?

1241  
1242 A: Yes, it would.

1243  
1244 Q1: And you originally said he was about 10 to 15 feet away from both you and  
1245 Officer Wooley?

1246  
1247 A: Yes.

1248  
1249 Q1: Um, at what point in time was the distance between when the, um, rounds  
1250 were being fired? Did he advance inside that 10 to 15 feet?

1251  
1252 A: He was already - he was, uh, he was already with-within the 10 to 15 feet  
1253 when the rounds were being fired.

1254  
1255 Q1: Okay. And you made mention that his hands were extended out in front of  
1256 him?

1257  
1258 A: Correct.

1259  
1260 Q1: Can you tell me, based on your training and experience, how you interpreted



1261 that?

1262  
1263 A: I interpreted that as he had something in his hands in which he was walking  
1264 towards Officer Wooley with the - with the intent to - to harm him. That's  
1265 how I perceived it.

1266  
1267 Q1: Okay. Okay. That's all I've got.

1268  
1269 Q: All right. We're gonna take a break and we're gonna pause the interview at -  
1270 it's 1605. All right. Restarting the interview at 1611 hours. Uh, Officer Clark,  
1271 just a couple more questions. Um, in addition to the spotlight, did you use any  
1272 other artificial lighting such as a flashlight?

1273  
1274 A: Yes, I did.

1275  
1276 Q: Okay. Can you describe, uh, how that went with your flashlight, were you  
1277 holding it?

1278  
1279 A: Um, I used - I had my flashlight, I think I utilized it after this incident, so it  
1280 was to, uh, check the scene, and (unintelligible) the stuff afterwards.

1281  
1282 Q: Okay. Was it actually in your hand while your firearm was deployed at the  
1283 time that you fired?

1284  
1285 A: I don't - I don't think so, no.

1286  
1287 Q: Okay. I don't have anything further. Do you have anything?

1288  
1289 Q1: I have nothing.

1290  
1291 Q: Okay. District Attorney's Office?

1292  
1293 Q3: Uh, yeah. The body-worn camera again, um, you said you activated it?

1294  
1295 A: Correct.

1296  
1297 Q3: And did you have a chance to review it?

1298  
1299 A: Yes, I did.

1300  
1301 Q3: The footage? And when did you do that?

1302  
1303 A: This, uh, this afternoon.

1304  
1305 Q3: And did you review that between the time of the incident and before this

1306 interview this afternoon, at any point?

1307

1308 A: No, this is the first I saw it.

1309

1310 Q3: Okay. And you - you said when you got out of the vehicle, that Officer  
1311 Wooley had something to the effect of "Drop the knife" and "He's got the  
1312 knife", is that correct?

1313

1314 A: Yes.

1315

1316 Q3: Do you know who he's directing that to or if anybody?

1317

1318 A: To the suspect that was, uh, to the suspect.

1319

1320 Q3: So he's saying to the suspect "Drop the knife"?

1321

1322 A: Yes, sir.

1323

1324 Q3: But what about when he said "He's got the knife"?

1325

1326 A: He was saying that to me and Sergeant DeCosta to let us be aware of the  
1327 situation.

1328

1329 Q3: All right. And you mentioned that Officer Wooley had discharged his service  
1330 pistol, correct?

1331

1332 A: Yes, yes, sir.

1333

1334 Q3: And, um, was that before, after or right about the same time that you  
1335 discharged yours?

1336

1337 A: Right about the same time.

1338

1339 Q3: At about the same time? Did you see him shooting or you just heard?

1340

1341 A: No, I just heard.

1342

1343 Q3: And so my understanding is when you got out of the car, the su- the suspect  
1344 was about 10 or 15 feet from you and also from Officer Wooley, correct?

1345

1346 A: Yes, sir.

1347

1348 Q3: At the time that you discharged your, uh, service pistol, how far was the  
1349 suspect from Officer Wooley?

1350

1351 A: Uh, 10, 15, 10 ten feet I'd say, 10, 15 feet, somewhere around there?  
1352  
1353 Q3: So he had moved from a distance of 10 to 15 feet to about 10 feet, so about  
1354 five feet?  
1355  
1356 A: No, no. He was - he was within 10 to 15 feet, uh, from Officer Wooley, uh,  
1357 when - when we delivered the rounds.  
1358  
1359 Q3: Okay. Let me just - so it's clear in my mind.  
1360  
1361 A: Yeah.  
1362  
1363 Q3: So when you first got out, the suspect was about 10 to 15 feet from - between  
1364 Wooley and the suspect, correct?  
1365  
1366 A: He's probably closer to 20 feet or so and then he's walk - he's walking in.  
1367  
1368 Q3: Okay.  
1369  
1370 A: So, sorry.  
1371  
1372 Q3: So he's - he was moving...  
1373  
1374 A: He was moving...  
1375  
1376 Q3: ...forward...  
1377  
1378 A: ...forward...  
1379  
1380 Q3: ...and he has moved forward approximately five feet when you discharged  
1381 your...  
1382  
1383 A: Approximately 10 - 10 en feet from, um, he was approximately 10 feet from  
1384 Officer Wooley when I discharged my service weapon.  
1385  
1386 Q3: Okay. So from a distance of about 20 feet, he moved there approximately 10  
1387 feet, correct?  
1388  
1389 A: Correct.  
1390  
1391 Q3: And at the time you discharged your service pistol, he's about 10, 15...  
1392  
1393 A: From Officer Wooley.  
1394  
1395 Q3: All approximation?



1396  
1397 A: Yes.  
1398  
1399 Q3: Did the suspect say anything while he was advancing towards Officer  
1400 Wooley?  
1401  
1402 A: Uh, if he did I didn't hear anything.  
1403  
1404 Q3: Did he make any sounds or anything like that?  
1405  
1406 A: Not that I recall.  
1407  
1408 Q3: So there.  
1409  
1410 Q: Okay.  
1411  
1412 Q4: So I just want to go back, um, just to when you arrive on the street. As I  
1413 understand it, you're going down the street, you pass a patrol car. You're not  
1414 sure whose patrol car that is, is that right?  
1415  
1416 A: Correct.  
1417  
1418 Q4: And was that parked on the driver's side or the passenger's side of your car?  
1419  
1420 A: Uh, it was on the, uh, it was on my driver's side.  
1421  
1422 Q4: Okay. All right. So you continue down past that, you don't see anyone else at  
1423 that point except for up in front of you?  
1424  
1425 A: Correct.  
1426  
1427 Q4: Okay. So you continue forward, um, and then I think you told us that you  
1428 stopped behind the next patrol car?  
1429  
1430 A: Yes.  
1431  
1432 Q4: And that patrol car, was that Wooley's patrol car?  
1433  
1434 A: I'm assuming so.  
1435  
1436 Q4: Okay. That's where Wooley was though?  
1437  
1438 A: Yeah.  
1439  
1440 Q4: Okay.

1441  
1442 A: It seems very likely that - I mean, uh, without specifically seeing him in the  
1443 car I would say...  
1444  
1445 Q4: Yeah.  
1446  
1447 A: ...that for all intents and purposes, it's very clear that would have been Officer  
1448 Wooley's car.  
1449  
1450 Q4: Okay. When you stop, I believe you told us that you offset your vehicle?  
1451  
1452 A: Uh, I didn't offset. I just kind - I - I - when I say offset, I - basically Officer  
1453 Wooley was here, I was right here. So I stopped in the middle of the road.  
1454 Officer Wooley was kind of off to the left.  
1455  
1456 Q4: Okay. So you're to - you would be closer to his - what is that, the right rear  
1457 quarter panel of Officer Wooley where he stopped?  
1458  
1459 A: Yes, sir.  
1460  
1461 Q4: Okay.  
1462  
1463 Q: For the audio, Officer Clark's indicated with his hands, uh, left hand is out  
1464 and his right hand is directly behind and to the right.  
1465  
1466 Q4: Okay. And you're both driving the SUVs, is that correct?  
1467  
1468 A: Yes, sir.  
1469  
1470 Q4: Okay. You get out of your car, I'm assuming on the driver's side of course.  
1471  
1472 A: You're right.  
1473  
1474 Q4: You weren't climbing all over? Okay, so you got out your car. When you  
1475 open your door, are you directly behind Wooley's car now?  
1476  
1477 A: Yes.  
1478  
1479 Q4: Okay. And it's from that position you're able to see the subject?  
1480  
1481 A: Yes, sir.  
1482  
1483 Q4: Okay. And were you looking through the - your window, over it...  
1484  
1485 A: I - I - I can see over the - I can see over the hood of the car, of - of the - his

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1486 car, the suspect approaching.

1487  
1488 Q4: Okay. So are you at the hood or are you at the rear of the vehicle?

1489  
1490 A: I can see - I - I can see him from both angles, so basically I originally saw him  
1491 as I exited my car, which would have been closer to the rear of Officer  
1492 Wooley's car.

1493  
1494 Q4: Okay.

1495  
1496 A: But I can still see him coming, and then as I approach to, you know, what is it,  
1497 the distance from the - the - the rear of a car to the front of the car, uh, to the  
1498 door portion of the - the hood, um, a few feet so, uh, but then I could see him  
1499 clearly 'cause I never lost sight of him.

1500  
1501 Q4: Okay. So you're looking over the top of the vehicle is what I'm trying to get  
1502 at?

1503  
1504 A: Yes, sir.

1505  
1506 Q4: Okay. So you - you look over the top of the vehicle. Wooley then is on the  
1507 opposite side of where you're headed to, is that correct? 'Cause you're going  
1508 to the driver's side - I mean the passenger's side?

1509  
1510 A: Correct.

1511  
1512 Q4: All right. You can see him the entire time, the subject, you can see him the  
1513 entire time?

1514  
1515 A: Yes, sir.

1516  
1517 Q4: Okay. Now, at some point you said that you heard Wooley say something to  
1518 the effect of "Drop the knife, he's got a knife," or some - some words to the  
1519 nature of that. I didn't write it down verbatim what he said.

1520  
1521 A: Yes, yes.

1522  
1523 Q4: Okay. Where in relationship to Wooley's vehicle were you when you heard  
1524 that?

1525  
1526 A: Um, I was right - I would say right at his passenger door.

1527  
1528 Q4: Okay. All right, so you've gotten as far as the passenger door. Do you  
1529 continue forward from the passenger door?

1530



1531 A: Just a matter of, you know, inches really at that point.  
1532  
1533 Q4: Okay, okay. Are you...  
1534  
1535 A: I used the car as a, uh, kind of a barrier between, uh, myself and the subject  
1536 and within earshot of Officer Wooley.  
1537  
1538 Q4: Okay.  
1539  
1540 A: So it was kind of a - without making a conscious decision to use that as a  
1541 tactical advantage, it was - that was in my thinking, it was like I was gonna  
1542 use that car as a buffer between us in case he turned on me, if that's something  
1543 - if that makes sense.  
1544  
1545 Q4: Yes. And as you're there, um, had Wooley begun to fire at that point?  
1546  
1547 A: I'm sorry, say that again.  
1548  
1549 Q4: Once you got to this area that you described as maybe in inches in front of the  
1550 driver's door, after you heard Wooley say something to the effect of "He's got  
1551 the knife," had Wooley fired at that point?  
1552  
1553 A: No.  
1554  
1555 Q4: Okay. So you're in this location that we both described there. Um, do you  
1556 hear Wooley, uh, well does Wooley say anything else while you're there at  
1557 that point?  
1558  
1559 A: Just what I told you, I don't recall...  
1560  
1561 Q4: Okay. Did he say "Drop the knife" again or anything like that?  
1562  
1563 A: Um, yeah, he gave him repeated commands, you know.  
1564  
1565 Q4: Okay. Was he giving repeated commands the entire time that you were at that  
1566 location you described as inches, uh, in front of that, uh, passenger door?  
1567  
1568 A: Yes, until there was no other option, um, and the incident happened, so...  
1569  
1570 Q4: Okay. And then you - you said if I remember correctly, you said you heard  
1571 Wooley fire as well?  
1572  
1573 A: Correct.  
1574  
1575 Q4: Okay. And you fired at some point as well?

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1576  
1577 A: Yes, sir.  
1578  
1579 Q4: Okay. Um, and you said it was like two, possibly three shots?  
1580  
1581 A: Yes.  
1582  
1583 Q4: Okay. When you fired, um, describe the subject - now I know that based on  
1584 our conversation here, he's approximately 10 feet from Wooley. But describe  
1585 what you're seeing when you fired your weapon.  
1586  
1587 A: Uh, what I'm seeing after I fired my weapon is that, uh...  
1588  
1589 Q4: I'm sorry, hang - hang on for one second.  
1590  
1591 A: Sure.  
1592  
1593 Q4: You said describe what I'm seeing after. Uh, I'm asking you to describe what  
1594 you're seeing as you're firing your weapon.  
1595  
1596 A: Oh, as I'm firing my weapon? He's - he's coming after Officer Wooley, um,  
1597 without, uh, with - with his hands extended in what I believe was in a way that  
1598 was going to harm Officer Wooley.  
1599  
1600 Q4: Okay. Were both hands extended?  
1601  
1602 A: He had his hands like this I believe, something along those lines.  
1603  
1604 Q4: Okay. And by this he's - you've got...  
1605  
1606 A: Forward out with my hand cupping my - my right hand.  
1607  
1608 Q4: Okay. All right. At that point could you see anything in his hands?  
1609  
1610 A: I did not, no, I couldn't.  
1611  
1612 Q4: Okay. So you fired one, two, possibly a third time. What happens with the  
1613 subject at that point?  
1614  
1615 A: At that point, um, he no longer was advancing at Officer Wooley, and...  
1616  
1617 Q4: Okay.  
1618  
1619 A: ...he eventually fell to the floor.  
1620

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1621 Q4: Okay. When you initially fired, was he moving towards Officer Wooley or  
1622 had he stopped at that point?  
1623  
1624 A: No, he was still going towards Officer Wooley...  
1625  
1626 Q4: Okay.  
1627  
1628 A: ...when I fired at him.  
1629  
1630 Q4: Okay. So it's not until after you fired that you saw him actually stop?  
1631  
1632 A: Yes, sir.  
1633  
1634 Q4: And that - and then he fell to the floor?  
1635  
1636 A: That's correct.  
1637  
1638 Q4: Okay. Now you also told us that you, um, he gets handcuffed, and you and  
1639 another officer handcuffed him?  
1640  
1641 A: Yes, Officer Gillett.  
1642  
1643 Q4: Gillett? Okay, got it. And you said you saw the box cutter under him?  
1644  
1645 A: Yes.  
1646  
1647 Q4: Could you describe the box cutter?  
1648  
1649 A: It looked like a standard like metal, um, grayish metal box cutter.  
1650  
1651 Q4: Okay. Approximately how long or...  
1652  
1653 A: Just a standard like, you know, four inches or something.  
1654  
1655 Q4: Okay. Did you see anything else under him at that point?  
1656  
1657 A: I wasn't looking, no, I didn't see anything.  
1658  
1659 Q4: Okay. Okay. You didn't search him or anything like that, right?  
1660  
1661 A: No, sir.  
1662  
1663 Q4: As you were going to the location before you actually arrived on the scene,  
564 had you received any information that anyone had been harmed or stabbed or  
1665 anything like that?

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1666  
1667 A: Um, I don't recall, um...  
1668  
1669 Q4: Okay.  
1670  
1671 A: ...hearing. I'm not saying that that - that wasn't, I just don't recall hearing that.  
1672  
1673 Q4: Okay.  
1674  
1675 A: I do remember, um, I believe, if I recall, um, correctly, was the argument was  
1676 - had something to do with a boyfriend and girlfriend, but that - I don't know  
1677 the type of or rem- remember the details.  
1678  
1679 Q4: Okay, okay. Thank you. Caesar, you got anything else?  
1680  
1681 Q3: Just one, uh, backdrop. What was your backdrop?  
1682  
1683 A: Uh, it was, uh, I had a big white van, um, that I got up front - the engine  
1684 block, uh, pointed directly towards Officer Wooley. Um, and I was kind of  
1685 diagonal to it so I had - I would have essentially had the engine block and the  
1686 side of the van as a backdrop.  
1687  
1688 Q3: That's all I had.  
1689  
1690 Q: Before I turn it over to Mr. Stern, um, did you move your vehicle after the  
1691 incident?  
1692  
1693 A: No.  
1694  
1695 Q: Okay.  
1696  
1697 A: I did not.  
1698  
1699 Q: And, um, you noted that, uh, Officer Wooley said "He's got the knife," to you  
1700 and what you believe was Sergeant DeCosta. Was that radio traffic or are you  
1701 actually hearing him say this?  
1702  
1703 A: Uh, I'm actually hearing him say it, but I - I don't know. He might have had  
1704 his hand on the mic and doing it at the same time. I don't recall if it came out  
1705 of my radio, but I definitely heard him saying, it seemed to me that it was  
1706 more of just kind of letting us know but it's very possible that he could have  
1707 been broadcasting on the radio 'cause he had remarkable radio, uh, etiquette  
1708 control in that whole situation so it's very possible that he could have done  
1709 both, so...  
1710

1711 Q: Okay. Do you recall hearing anything else on the radio as the incident's kind  
1712 of unfolding from either, uh, Officer Wooley or Sergeant DeCosta?  
1713  
1714 A: No.  
1715  
1716 Q: Okay. Uh, Mr. Stern?  
1717  
1718 Q2: Sure. Um, at what point do you turn on your body-worn camera?  
1719  
1720 A: Um, right after the - the shooting.  
1721  
1722 Q2: Uh, why at that point and not earlier?  
1723  
1724 A: Um, the reason why is because the way the shifts are designed is that when  
1725 you work graveyards, you're not primary for, um, uh, paper and - and being  
1726 the, uh, primary officer for incidents or anything that goes on in the city 'til 9  
1727 o'clock. Um, based on the air quality, we were kind of told to - to hunker  
1728 down and not do a whole lot of pro-activity outside of our car 'cause of the air  
1729 quality, so that's why I was underneath Review, and I just hadn't turned it on  
1730 for the day yet, uh, or turned - or clicked it, so when I got on the scene it just  
1731 happened so quickly that I didn't have time to click it on until right after -  
1732 once I felt that it was - I was in a safe environment, then I activated it, but...  
1733  
1734 Q2: Okay. I don't have any other questions. Thank you, gentlemen.  
1735  
1736 Q1: Thank you.  
1737  
1738 Q: All right. Is there any other questions before we, uh, conclude?  
1739  
1740 Q2: You want him to sign that?  
1741  
1742 Q: I do.  
1743  
1744 Q2: Sure.  
1745  
1746 Q: Um, Officer Clark, if you can take that red marker again - you can indicate a  
1747 number 1 on this picture. This is the Google Map, and it's just further out. So  
1748 if you can just indicate number 1, sign your name and date it, and again,  
1749 11/18/2018. All right. As you take the second Google Map and it's indicated -  
1750 if you can indicate number 2, sign your name and date it, and again,  
1751 11/18/2018. You already had to do that with the photograph, but I'm gonna,  
1752 um, have you sign and date the photograph that we showed you of the razor  
1753 blade.  
1754  
1755 A: Number 3?

1756

1757 Q: Uh, no, you can just sign and date that one on the (unintelligible).

1758

1759 Q1: Anywhere along the...

1760

1761 A: Sure.

1762

1763 Q1: Anywhere along the bottom you can initial...

1764

1765 A: Okay.

1766

1767 Q1: ...it's visible.

1768

1769 A: Date it?

1770

1771 Q1: Please.

1772

1773 Q: If you would, 11/18/18. Officer Clark, is there anything that you think we  
1774 should know about that we haven't covered during this interview?

1775

1776 A: No, sir.

1777

1778 Q4: How t- how all are you?

1779

1780 A: Me?

1781

1782 Q4: Yeah.

1783

1784 A: 5'9" and change.

1785

1786 Q4: Thank you.

1787

1788 Q: Okay. Uh, Officer Clark, I appreciate your time and we're gonna conclude the  
1789 interview at 1627 hours.

1790

1791 Q4: I like that, 5'9" and change.

1792

1793 A: I try to give myself a little extra bump, you know.

1794

1795 Q: Okay.

1796

1797 A: (Unintelligible) man that way.

1798

1799

1800 The transcript has been reviewed with the audio recording submitted and it is an accurate



1801 transcription.

1802 Signed \_\_\_\_\_